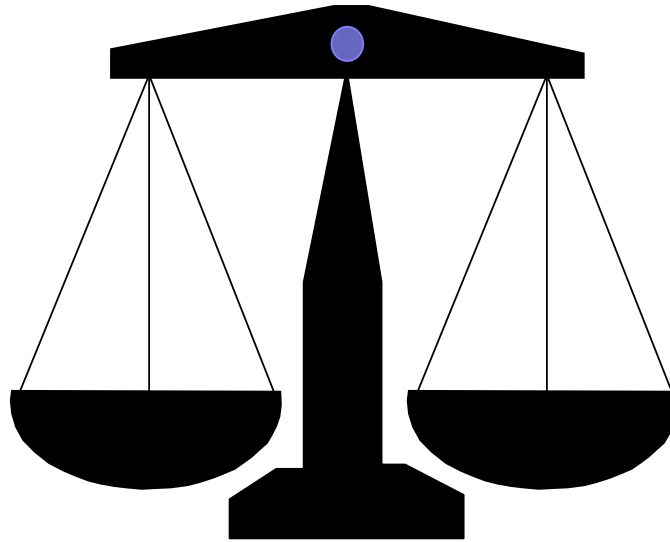


Quick Reference Guide To Legal Assistance



Consolidated Legal Assistance Office
Office of the Staff Judge Advocate
PSC Box 20004
Marine Corps Base
Camp Lejeune, North Carolina 28542-0004
(910) 451-7085 (Appointments)
(910) 451-1903 (Information Menu)
(910) 451-3398 (Fax)
www.lejeune.usmc.mil/sja/legal

Warning: This guide is intended as general information only. It is not intended as advice or as a substitute for an attorney. Persons who need advice on a specific issue should consult with an attorney. Although every effort has been made to provide accurate, up-to-date information in this Guide, there is no warranty as to its currency or accuracy. Users rely on this information at their own risk.

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SECTION I
ABOUT THE CONSOLIDATED LEGAL ASSISTANCE OFFICE
(CLAO)

Phone 451-1903 (Telephone Menu)

Mission: To provide free and confidential legal advice and assistance concerning civil legal matters* to active duty and retired military personnel and their authorized family members. Legal assistance service may be limited based on attorney availability.

Location: Building 66, Marine Corps Base, Camp Lejeune. (Corner of Holcomb Blvd and Molly Pitcher Drive).

Services Include:

- Preparation of Powers of Attorney and Wills
- Notary Public Services

Advice from an attorney/legal services specialist on the following:

- | | |
|--------------------------------------|----------------------|
| - Stepparent Adoptions | - Automobiles |
| - Contracts | - Separation/divorce |
| - Consumer issues | - Finances/taxes |
| - Real estate (no closings) | - Landlord/tenant |
| - Fair Debt Collection Practices Act | - Nonsupport Claims |
| - Immigration/naturalization | - Name changes |
| - Servicemembers Civil Relief Act | - Paternity |

LEGAL SPECIALIST ASSISTANCE: (immigration, naturalization, notarizations)

Immigration/naturalization: For info, call 451-9725. **No walk-ins Friday**

Notary public: Notary services hours are 0800 – 1130 and 1300 – 1600 daily

Note: NFCU and MFCU also provide free notary services for their members.

Base Library has a notary available.

ATTORNEY ASSISTANCE:

WALK-INS: Tuesday and Thursday mornings.

Based on attorney availability. Doors open at 0730

WILL BRIEFS: All ranks and family members; Tuesdays at 1300 at Base Theater

POA BRIEFS: Tuesdays at 1400 at Base Theater; M-W-F at 1000 at Bldg. 66.

UNIT BRIEFS: Schedule through SNCOIC, CLAO at 451-9731; Units are encouraged to utilize the weekly will and POA briefs at the Base Theater on Tuesdays at 1300 and 1400.

**The Legal Assistance office cannot assist with military justice matters, serious civilian criminal matters, claims against the government or business ventures not of a personal nature.*

SECTION II POWERS OF ATTORNEY

References: (1) 10 U. S. Code §1044b: Military POA: requirement for recognition by states.
(2) N.C. Gen. Stat. Chapter 32A: Powers of Attorney

What Are They? Powers of attorney are written instruments authorizing one person to act on behalf of another. They can be very useful, especially for deploying military members, but as there are potential risks in giving someone a power of attorney, it is wise to consult with an attorney before doing so.

Types. There are two types of powers of attorney: "special" and "general." A special power of attorney is limited; it authorizes the person appointed to do only those acts specifically mentioned in the power of attorney. Examples include special powers of attorney to set up household goods moves through the Traffic Management Office, to sell or register vehicles, to provide childcare, and to make real estate transactions.

A general power of attorney is unlimited. If you give someone a general power of attorney, it typically gives the person appointed the power to do ANY act on your behalf. While this can be useful, especially if you are deploying or serving overseas unaccompanied, there also is potential for abuse. For example, the holder of the power of attorney can contractually bind you, empty your bank account, or sell your most cherished possessions.

Revocation. A power of attorney can be revoked, but the only truly effective way to do so is to get the original and all copies back and destroy them. Otherwise, even if you notify the holder of the power of attorney that you have revoked your power of attorney, businesses are entitled to rely on it and can hold you liable for any transactions made pursuant to it. The best way to notify the holder of the revocation of the power of attorney is to send them a revocation via certified mail. This not only puts the holder on notice, but it also establishes the date of the revocation.

Acceptance. Businesses or government agencies are *not required to accept* a power of attorney, regardless of how legitimate it is. Therefore, if there is some particular business or agency with which you think the power of attorney may be used, contact them and ask if a standard military power of attorney will suffice, or if they have a special form that they require.

SECTION III ESTATE PLANNING

References: (1) N.C. Gen. Stat. Chapter 28A: Administration of Decedents' Estates
(2) N.C. Gen. Stat. Chapter 29: Intestate Succession
(3) N.C. Gen. Stat. Chapter 30: Surviving Spouses
(4) N.C. Gen. Stat. Chapter 31: Wills

A. Will

What Is It? A will, simply put, is a document where you express your wishes as to what will happen when you die. Specifically, in a will, you can:

- Determine who gets your property.
- Name a person, called an "executor" or "personal representative" who will inventory all your property, go to the courthouse as required, and distribute your property.
- Name guardians for any minor children you may have in case both you and their other parent/guardian die.
- Leave burial instructions

Each state has its own requirements for executing a will correctly. At a minimum, the will usually must be in writing and properly signed and witnessed. Preparing a will without the help of a lawyer can lead to an invalid or imprecise will, causing your property to pass in a way you did not intend. Your legal assistance office can prepare a will for eligible clients free of charge.

What Happens if a Person Dies Without a Will? Each state has a statute that provides for how property will be distributed if a person dies "intestate," that is, without a will. States vary in the specifics, but all look for family members to get the property rather than it going to the state. In most states, settling small estates with or without a will is relatively simple and inexpensive.

Who Needs One? People who are married, have children, have a sizeable assets, who desire a distribution to people other than their closest blood relative, or who are pending divorce proceedings, are well advised to have wills. However, a will may be of limited utility for persons who are single, have no children, do not have sizeable estates, and simply want everything to go to their parents.

How Do I Get One? A will class is given every Tuesday at 1300 at the Base Theater. (An alternate site is sometimes necessary when the Theater is in use.) This class produces basic wills only; those who have sizeable estates (over \$1.5M including insurance), or who want more extensive estate planning advice should contact a qualified civilian attorney. Referral lists are available at the Consolidated Legal Assistance Office. Unit will briefs can be arranged by contacting the SNCOIC at 451-9731.

Restrictions. Our office may not be able to provide wills for residents of Guam, Puerto Rico, Louisiana, or the U.S. Virgin Islands.

What about a Trust? Your will can contain a trust for the benefit of your minor children. A designated person called a Trustee, would manage the property bequeathed to the child solely for the children's benefit, and then disburse any remaining assets to them upon reaching a specified age.

Your SGLI. You must actively designate the beneficiary of your Servicemen's Group Life Insurance (SGLI) benefits. SGLI proceeds will go to the person or entity designated by you on the SGLI election form. The election form determines who receives the SGLI proceeds, not the will. On the election form you can, however, direct that the proceeds be poured into a trust for minor children contained in your will.

What Do I Do with the Will After I Get It?

- Store it in a safe place. The ideal place is a fireproof box in a place where your family knows you store important documents. Avoid safe deposit boxes, as these are sometimes sealed upon a person's death.
- Take good care of it. Any damage or treatment that alters the will can be construed as intent to void the will. Keep it flat and clean and avoid restapling the will, folding, marking, tearing, or otherwise altering the will in any way.
- Tell loved ones, especially your executor, where your will is and what your wishes are.

B. Living Will

A living will informs physicians in advance that if you have a terminal, incurable condition and you are in a persistent, vegetative state, you do not want your life artificially prolonged by extraordinary measures.

C. Durable Power of Attorney

A durable power of attorney is like any other power of attorney in that it is a document that names someone to act on your behalf. However, the durable power stays in effect, or endures, when you become incapacitated such that you are unable to intelligently make and communicate your decisions. The durable power of attorney may be general; that is, allowing another to make all decisions on your behalf. It may also be limited to health care decisions, such as the decision to withhold life-sustaining procedures if you are in a permanent and irreversible coma, or are in a persistent vegetative state. In addition to these life or death cases, the health care agent can also be authorized to make more routine decisions, such as hiring health care professionals, obtaining medical records, consenting to x-rays, medications, or surgery on your behalf, etc.

SECTION IV

SERVICEMEMBERS CIVIL RELIEF ACT

Reference: (1) 50 U. S. Code §§ 501-591: SCRA

The recently enacted Servicemembers Civil Relief Act (SCRA) expands and improves the service member protections provided in the former Soldiers' and Sailors' Civil Relief Act (SSCRA). The Act provides a means for service member to delay civil suits, to terminate rental and automobile leases upon deployment, and to reduce interest on pre-service obligations to six percent. The Act is intended to enable servicemembers to devote full attention to duty and relieve stress on the family members of those deployed.

The new SCRA:

- Provides a servicemember who receives permanent change of station orders or who is deployed for 90 days or more the right to terminate a housing lease, with at least 30 days notice. Servicemembers must provide the landlord with written notice and a copy of orders.
- Provides a servicemember who receives PCS orders OCONUS, or deployment orders for 180 days or more the right to terminate an auto lease, with 15 days notice.
- Expands protection to civil judicial and administrative actions.
- Restates the interest rate cap of 6%. Interest rates for obligations incurred prior to active duty service must be reduced to six percent upon written request by the service member, unless the credit can establish in court that military service does not affect the member's ability to pay. Furthermore, the new SCRA makes clear that interest above 6 percent must be permanently forgiven. The monthly payment must be reduced by the amount of interest saved during the covered period.
- Gives servicemembers a 90-day postponement of civil actions and requires a court order and associated due process before eviction, foreclosure or seizure of property proceedings may conclude.
- Requires litigants to file a written sworn statement stating whether you are in the military and if the evidence suggests you are in the military, the court must appoint an attorney to represent your interests before entering a judgment against you.
- Prevents states from using the income earned by a servicemember in determining the non-military spouse's tax rate when the servicemember does not maintain their permanent legal residence in the spouse's state.

SECTION V FAMILY LAW

1. Adoption Reference: (1) N.C. Gen. Stat. Chapter 48: Adoptions

Adoption is the procedure by which a person assumes all parental rights and duties for a child not biologically his or hers. The result is that the child ceases to be the legal obligation of the natural parent(s) and becomes the responsibility of the adoptive parent(s). The Consolidated Legal Assistance Office can provide information and assistance in filing an uncontested stepparent adoption.

2. Domestic Violence Reference: (1) N.C. Gen. Stat. Chapters 50(A) and (B) Points of Contact: (1) Community Counseling Center (on base): (910) 451-2864 (2) Onslow Women's Center (off base): (910) 347-4000.

Restraining Orders References:

- (1) N.C. Gen Stat. Chapter 50(B)**
- (2) SECNAVINST 1752.3A**

-One spouse may seek a restraining order against the other spouse based on allegations of abuse. A civil restraining order directs that the restrained spouse to refrain from contacting or coming within a certain distance of his or her spouse. If it appears necessary to prevent further acts of domestic violence, the District Court may issue a temporary order after an ex parte hearing; that is, immediately and without the other spouse present to refute the charge. A hearing will be conducted with both parties present within ten days to determine whether to rescind, continue, or modify the order. The Base Family Counseling Center may be able to assist in obtaining such a restraining order. (Explanation: rewritten to explain the process of obtaining an ex parte TRO and the follow on hearing requirements.) Violation of such an order is a criminal offense.

-A Military Protective Order (MPO) may be issued by military authority. Such an order directs a service member to refrain from contacting or coming within a certain distance from another person. Violation of the MPO is punishable under the UCMJ.

3. Paternity References:

- (1) N.C. Gen. Stat. §110-132(a): Acknowledgment of paternity
- (2) N.C. Gen. Stat. §49-14: Civil action to establish paternity
- (3) N.C. Gen. Stat. §§49-10 and 49-12: Legitimation

Point of Contact: (1) Onslow County Child Support Office: (877) 603-8198

When the mother of a child is unmarried either at the time of birth or at the time of conception, paternity is not automatically established. Nevertheless, an action does not necessarily have to be filed in court to establish paternity. Under North Carolina law, both the mother and father of the child can sign a sworn statement establishing the identity of the natural father. This "Acknowledgment of Parentage" form is available at hospitals as well as through the local Child Support Enforcement Agency.

If the father of a child born out of wedlock does not voluntarily acknowledge paternity, a civil action to establish paternity can be initiated. Normally, blood testing is done. The local Child Support Enforcement Agency will assist in securing paternity determinations and child support.

4. **Marital Separations and Divorce**

Reference: N.C. Gen. Stat. Chapter 50: Divorce and Alimony

What Steps Do I Have To Take To Be Considered Separated? In North Carolina, being separated means living separate and apart with at least one of the spouses intending to remain apart permanently. There is no requirement for a written agreement in order to be “legally separated.” However, separation agreements are extremely useful. First, the agreement sets out the terms of the separation period, including such matters as spousal support (alimony), child support, custody and visitation, payment of debts, and the possession and distribution of assets. Obviously, if the parties can resolve these issues through mutual consent, arguments during the separation period can be avoided. Secondly, after the one year period of separation, the separation agreement tends to result in uncontested divorce proceedings that are relatively simple and inexpensive. Should both spouses agree, action can be taken to cause the terms of the separation agreement to become the terms of the final decree of divorce.

Does Separation Affect Base Housing? If a couple separates while occupying base housing, the quarters must be vacated within 30 days unless the spouse remaining in the quarters has an independent right to family housing (such as he or she is active duty military with custody of children).

Separation Agreement - A separation agreement is a voluntary, written contract between spouses that settles such matters as child custody, support, visitation, asset division, etc.

Who Should Have One? A separation agreement may be a wise idea if there are debts, children, support claims, or property involved and the parties want to settle these matters in writing. However, there is no law requiring couples to have one, and neither spouse can be forced into signing one. No one should sign a separation agreement without fully understanding it and first consulting an attorney.

"Dating Clauses." Often, separation agreements will have a clause stating that each party will leave the other alone as if they were unmarried. Some people incorrectly think that this means they are free to have sexual relations with other people as if they were already divorced. However, the parties to a separation agreement remain married until a final decree of divorce is entered. The separation agreement does not shield the parties against prosecution under the UCMJ for adultery. Two elements must be proved to obtain a conviction for adultery under the UCMJ: (1) The defendant was married and had sexual intercourse with a person other than his/her spouse and (2) Under the circumstances, the conduct of the defendant was service discrediting or prejudicial to good order and discipline in the armed forces. It is up to the tribunal's fact finder (judge, jury or, if NJP, the CO) to determine whether the evidence is sufficient to conclude the existence of both

elements. The existence of a separation agreement is but one factor that may be considered.

5. **Financial Support of Family**

Chapter 15 of MCO P5800.16 (Legal Administration Manual) requires Marines to provide continuous and adequate financial support to their families. If there is a court order for support, the Marine must obey it. If there is a separation agreement addressing support, the Marine must obey that. If there is neither a court order nor a separation agreement, the Marine is obligated to provide support in the amounts indicated in the order. Failure to provide such support may be a basis for separation from the service and/or prosecution under the UCMJ.

(1) Separation Agreement or Court Order. As indicated above, if there is a separation agreement or court order addressing support, the provisions of that agreement or order control. To modify these amounts, the couple must mutually agree to change the separation agreement or go to court for modification of the order. If there is a court order for support, either the court or an authorized agency such as a state child support enforcement office may request the military to involuntarily withhold a portion of the member's pay to satisfy the order. The procedures for processing such requests are contained in the LEGADMINMAN, paragraphs 15006 or 15007.

(3) No Court Order or Separation Agreement. If there is no court order or written agreement between the parties as to an amount of support to be provided by the Marine, the LEGADMINMAN establishes the interim support requirements (to be used until divorce or until there is an agreement or court order):

The service member shall pay the amount indicated in the second or third column, whichever is greater, up to a maximum of 1/3 gross pay (all military pay and allowances prior to taxes and deductions) BAH credited to the Marine for government housing, but not actually paid in cash, is not counted as income for the purposes of support calculations.

# of family members entitled to support	minimum month amount per member	share of monthly BAH/OHA per requesting member
1	\$350	1/2
2	\$286	1/3
3	\$233	1/4
4	\$200	1/5
5	\$174	1/6
6 or more	\$152	1/7

Example: If there are two family members entitled to support, interim support is the greater of either \$286 per family member (\$572 total) or 1/3rd of the monthly BAH/OHA per family member (2/3 BAH/OHA total).)

(3) Can the Support Requirements be Modified?

The interim support requirements can be reduced or eliminated. A Commanding officer has discretion to reduce or eliminate the interim financial support standards under four circumstances in paragraph 15004.5:

- Gross income of the spouse exceeds the gross military pay of the Marine. This does not relieve the Marine from the requirement to provide support for minor children.
- Interim support has been provided to the spouse for 12 uninterrupted months. This exception applies only if the parties have been separated for 12 months or longer and the Marine has not tried to avoid service of process or used other methods to prevent a court from ruling on support. This does not relieve the Marine from the requirement to provide support for minor children.
- Marine has been the victim of substantiated abuse by the spouse seeking support. This does not relieve the Marine from the requirement to provide support for minor children.
- The Marine is paying "in kind support" or regular and recurring obligations of the family members requesting support. Some examples are when a Marine is paying a mortgage for a home the spouse is living in or a loan for a car the spouse is driving.

The commanding officer must consult with the appropriate staff judge advocate prior to reducing or eliminating the interim support standards. A commanding officer has no authority to reduce or eliminate support standards in any situation not listed in Paragraph 15004.5.

BAH Fraud. The DOD Pay Manual provides that, to keep drawing BAH at the "with dependents" rate, a service member must pay for support at least the BAH differential (the difference between "with" and "without dependents") rate. If the member fails to pay at least this amount, the government may recoup the amount previously paid during the period of nonsupport, stop future BAH, and may even prosecute for fraud if the service member willfully kept the money without paying it to the spouse, either directly or indirectly.

SECTION VI CONSUMER LAW

1. Contracts

Before signing any contract:

- Read everything. Make sure you understand it *before you sign*. Legal Assistance can provide an explanation of your contract.
- Never sign anything with blank spaces. Insist the spaces be filled in or crossed out.
- Get a copy of everything you sign. Keep it in a safe place.
- Oral guarantees are difficult to prove. Further, certain contracts are required to be in writing. Get everything in writing.
- Understand the other party's responsibilities as well as your own.
- Examine the purpose of the contract. For example, do not sign up for a "free" encyclopedia set when the contract actually requires you to pay for \$400.00 for the yearbook that goes with it.
- Do not let anyone rush you into signing. If the bargain will be gone tomorrow, it probably is not a bargain.
- Breaking a contract can be expensive. Don't make promises you can't keep.
- **If it sounds too good to be true, it probably is.**

2. Financing Purchases

The ease with which consumers can secure credit is a trap for the unwary. Many Marines become overburdened with debt early in their careers and find it very difficult to pay it off, especially when paying high finance charges. Here are some tips to avoid this:

- Only obtain credit for essential purchases. Ask yourself, "Is this something I absolutely need right now, or is it just something that would be nice to have?" If at all possible, save up so you can pay for purchases with money you have rather than through credit.
- If you must finance a purchase, shop for the best credit available. Make sure that the lender fully discloses and you understand all aspects of the transaction. If there is anything you do not understand, do not sign. Seek legal advice.
- If you find yourself in financial trouble, seek assistance through Transitional Support Services or a local non-profit Consumer Credit Counseling Service. Beware of businesses that advertise that they can "fix" your credit. All too often they just take your money and do not accomplish anything. Also, watch out for "loan consolidations." Occasionally they are not a bad option, but frequently they are at excessively high interest rates, and, in extreme cases, some companies have taken people's money and not applied it to their debts. Make sure you understand all terms of your new financing before signing. Again, seek independent advice or legal counsel if you have any questions or are not sure.

3. Repossession

Reference: (1) N.C. General Statutes §§25-9-503 through §§25-9-506

- When you buy items on credit, the lender will often take a security interest in the property (collateral for the loan). For instance, when you get a loan to buy a car, the car is the lender's collateral for that loan. If you fail to pay, the lender can get its collateral back.

- The lender can then sell the collateral. If the sale of the collateral is not enough to pay off the loan, then this is known as a "deficiency." The lender can come after the consumer for this deficiency.
- Under North Carolina law, a lender with a security interest can conduct a "self-help repossession" (one done by the lender himself without any judicial process) as long as it can be done without any breach of the peace. There is a breach of the peace when the person owing the money confronts the lender, at which point the lender must cease the self-help repossession and seek judicial process.
- No one can repossess property aboard Camp Lejeune unless either the debtor consents or there is a court order and the business has gone through the Civil Processing Center, Office of the Staff Judge Advocate, Marine Corps Base.
- Before attempting to seize the collateral themselves, businesses will frequently ask the debtor to turn over the property voluntarily (known as a "voluntary repossession"). Before you agree to this, see Legal Assistance. You should consider all alternatives and implications before taking this action.

4. **Door-to-Door Sales**

Reference: (1) 16 C.F.R. §429 (1995)

A Federal Trade Commission (FTC) Rule offers special protection to people who purchase items from door-to-door salesmen. For a purchase to be considered a door-to-door sale, there must be:

- A sale, lease, or rental of consumer goods or services;
- with a purchase price of \$25 or more;
- in which the seller or his or her representative personally solicits the sale, including those in response to or following an invitation by the buyer; and
- the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller.

If a sale meets these criteria, the FTC Rule (as well as North Carolina law) allows a 3-day cooling off period during which the consumer can for any or no reason cancel the transaction. The law also requires that the contract contain notice of this right to the buyer and have a detachable cancellation form. Note that this cooling off period does not apply to purchases made at a store.

Door-to-door sales are not authorized on Marine Corps Base, Camp Lejeune. Uninvited door-to-door salesmen should be reported to the Provost Marshall's Office.

5. **Automobiles**

Reference: (1) N.C. Gen. Stat. §20-351 through 20-351.9

a. North Carolina Lemon Law. North Carolina has a "lemon law" that protects consumers who have bought or leased a *new* vehicle that is a lemon. Note that the law pertains only to new vehicles; **there is no lemon law covering used vehicles**.

- **What Protection Does the Law Provide?** The law says that if a manufacturer cannot repair a serious defect in a new vehicle after a reasonable number of attempts, it must replace or buy back the vehicle at the consumer's option. The law not only covers cars, but pickup trucks, motorcycles, and most vans.

- **What Is a "Serious Defect"?** A serious defect is "any defect or condition or series of defects or conditions which substantially impair the value of the motor vehicle to the consumer." The defect must be in a part of the car covered by the manufacturer's express warranty, but it is not limited to things which make the car functional or not. Leaks, lack of air conditioning or heat, or serious paint problems, to name a few, could be defects, which substantially impair the car's value to the buyer. The defects must have appeared within the express warranty period, which the law says must last at least 12 months, or 12,000 miles. The consumer's right to replacement or refund is limited to defects which first occur no later than 24 months or 24,000 miles following original delivery of the vehicle, however, even if the warranty lasts longer. For warranty defects occurring for the first time thereafter, the customer would have to seek compensation for failure to repair (the difference in the value of the car as it is and the value it would have if repaired or the cost of repairs).
- **What Is a Reasonable Number of Attempts?** The law presumes that "a reasonable number of attempts have been undertaken" to fix the defects if:
 - (1) the same defect has been presented to the manufacturer or its authorized dealer for repair four or more times without success; or
 - (2) if the vehicle has been out of service during or while awaiting repair of a defect for a cumulative total of 20 or more business days during any 12 month period of the warranty, provided that the consumer has notified the manufacturer directly *in writing* of the existence of the defects and allowed the manufacturer a reasonable period, but not more than 15 calendar days, to fix them. This last requirement makes it vital that customers write the manufacturer directly about the problems early on if the dealer is having trouble getting them fixed. Do not let the dealer talk you out of writing the manufacturer directly.

b. Repairs. It is very difficult to prove a car repair case in court - so, protect yourself ahead of time:

- Take the time to find out which are reputable repair shops in your area BEFORE your car breaks down!
- Always get a repair estimate in writing BEFORE giving the OK to begin work.
- North Carolina laws allow "mechanic's liens," meaning a mechanic can hold on to your car until legitimate work is paid for. If there is a dispute, the car owner can post a bond with the court and get his or her car returned pending settlement of the dispute (this prevents the mechanic from keeping the car).

c. Automobile Insurance. Before purchasing a car, consider how much the insurance will cost, and whether you can afford both the car payment and the insurance premium. There are four fundamental types of automobile coverage:

- "Liability": insures against claims for the damage you cause to some other automobile, person or thing. It is essential to the responsible operation of a motor vehicle.
- "Collision": will pay for the damage that is done to your own vehicle as the result of a collision with something. It is strongly advised that this coverage be kept on new or relatively valuable automobiles. Most lending institutions require collision insurance before they will finance the car.

- "Fire, Theft, and Comprehensive": designed to pay for damage done to your car by other hazards.
- "Personal Articles": insurance against the damage suffered when personal articles in the vehicle are lost, stolen or damaged.

Your automobile insurance might not cover an accident that occurs when someone else is driving. Read your policy carefully to make sure you know what is covered. In addition, if you use your car to deliver pizza, you may be using your car for a commercial purpose. If your car is not insured for commercial use (cost is approximately 50% more than regular insurance) then you may not be insured at all. Consult your insurance agent with any question or for additional information.

Pay attention to the deductible for your insurance policy. This is the amount of money you have to pay before the insurance company pays the remainder. Deductibles can be as high as \$1,000, and as it is difficult for most people to come up with this kind of cash, it may be worth paying a little extra in premiums to have a lower deductible.

It is rare that buying your insurance as part of the purchase deal of the car is a good decision. You will pay very high premiums, have the cost of insurance included in the finance charge, and be paying for the insurance long after the coverage has expired and you are forced to pay additional premiums. Shop around!

d. Buying a Used Car. Generally, used cars are sold "as is," meaning without any warranty as to how it will run once you get it off the lot. The Federal Trade Commission requires used car dealers to post in the windows of the cars they sell a sticker that either says "With Warranty" or "As Is." The sticker should explain what these terms mean. Sometimes a salesperson will try to persuade the customer to ignore the "As Is" label and tell him or her that the dealer stands behind the car. In such case, there may be a warranty from the salesperson's representations, "As Is" sticker notwithstanding. However, THIS IS VERY HARD TO PROVE. Be very cautious of buying an "As Is" car. It is advisable to have an independent inspection by a reputable mechanic. Once you have the mechanic's opinion of what needs fixing on the car, you are in a better bargaining position with the seller to have these things fixed as a condition of the sale. Once you have bought an "As Is" used car, it is usually too late to get any relief if it turns out to be a lemon.

e. Leasing a Car. Leasing a vehicle frequently has lower monthly payments than buying one, but there are significant down sides to leasing that you should be aware of before making the decision to lease.

- It's not yours. You are merely renting someone else's property. When you make payments on a loan for a car you have purchased, you are building up equity in that car and getting closer to owning it outright. This is not so with a lease, although you sometimes can get an option to buy with a lease.
- Penalties. There are severe financial penalties/charges that may apply to you when you turn in your leased vehicle:
- Excessive mileage. If you drive more than a set amount per month over the period of your lease, you will pay an excessive mileage charge, generally 25 cents/mile.
- Early Termination. When you sign a lease, you agree to have that car and to pay for it for a set amount of time. If you turn in the car early, you will pay an early

termination fee, which can be severe (up to thousands of dollars). Essentially, this is the dealer's way of ensuring that he can recoup the money he would have made if you had kept the car for the full lease term.

- Wear and Tear. If there is damage that the dealer determines is excessive wear and tear, he can assess a fee for this.

f. Selling Your Own Car. Some service members think that they can sell their auto with a simple promissory note. There should also be a sales contract and consent from any lienholder (i.e. the bank).

NEVER let someone simply "assume" your payments. You should ensure that you are released from liability with your lender and that they are fully aware of the location of the collateral. Usually this means that the buyer must get financing.

6. **Debt Collection**

- References:
- (1) 15 U.S. Code § 1692 (Fair Debt Collection Practices Act)
 - (2) N.C. Gen. Stat. § 75-50 (North Carolina Debt Collection Act)
 - (3) MCO P5800.16 (LEGADMINMAN), Chapter 16
 - (4) NC Gen Stat 58-7- (Debt Collection Agencies)

The Federal Fair Debt Collection Practices Act regulates "debt collectors," which it defines as people whose principle purpose is the collection of debts, or who regularly collect debts owed to others. This means that the law applies primarily to collection agencies and not creditors collecting in their own name. However, if a creditor is collecting its own debt, you can look to North Carolina law for protection (see below).

The Fair Debt Collection Practices Act prohibits debt collectors from:

- Communicating about the debt to third parties (this would include a Marine's command) unless there is:
- A court order authorizing them to do so; or
 - Permission from the debtor given directly to the debt collector AFTER DEFAULT AND COLLECTION EFFORTS BEGIN.
- Representing that nonpayment will result in arrest, garnishment of wages or seizure of property unless that action is lawful and the collector intends to take the action.
- Threatening or harassing any person in attempting to collect a debt.
- Contacting debtors (the people who owe the money):
 - At unusual times and places.
 - At their place of employment once they are told the employer does not want such contact at the workplace.
 - After the debt collector learns that the debtor is represented by an attorney.
 - After the debtor tells them to stop contacting him or her (then the only further contact is to let the debtor know what further action will be taken, i.e. lawsuit).

North Carolina essentially mirrors the federal law, but specifically applies to creditors collecting their own debts rather than collection agencies. It should be noted, however,

that neither federal nor state law prevents MCCS, DECA, or other federal agencies from notifying commands of bad checks, failure to pay on DPP, etc.

If you believe that a debt collector is violating these rules, keep records of every contact the debt collector has with you or your employers and seek legal assistance.

7. Credit Reports

Reference: Federal Fair Credit Reporting Act 16 U.S.C. 1681

Lenders, banks, employers, insurers, and others use your credit report in making important decisions affecting you. The federal Fair Credit Reporting Act provides rights and responsibilities in the arena.

- Access to Information. Upon request, you have the right to obtain all information in your file held by credit reporting agencies (except for credit scores or other risk scores or predictors). Credit reporting agencies may charge a fee for disclosure of this information (unless adverse action has been taken -- see below), but the fee must be reasonable and cannot exceed an amount set by the federal government. Here are the three major nationwide credit reporting agencies:
- TransUnion Corporation. Phone: 1-800-645-1938. Web: www.transunion.com.
- Experian (formerly TRW). Phone: 1-888-397-3742. Web: www.experian.com.
- Equifax, Inc. Phone: 1-800-685-0241. Web: www.equifax.com.
- Investigation into Alleged Errors. If a person or business receives notice that there is a dispute regarding information they have provided to a credit reporting agency, they must, within 30 days, conduct an investigation and report back to the agency.
- If a credit reporting agency receives notice that there is a dispute regarding information, it must reinvestigate this information free of charge. While the matter is under investigation, it must record the current status of the information. Then they must either delete the disputed information or, if they determine the dispute to be unfounded, they must notify the consumer of their determination within 5 business days of making their determination.
- Rights When Adverse Credit Action Taken. A business that takes adverse action against you (e.g., denies credit or insurance based on a credit report) MUST provide:
- Notice of the adverse action against you;
- The name, address, and telephone number of the credit reporting agency that furnished the report on you;
- A statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the specific reasons why the adverse action was taken; and
- Notice of your right:
- To obtain a FREE copy of your consumer report from the credit reporting agency, including notice that the request must be made within 60 days; and
- To dispute the accuracy and completeness of any information in the consumer report.
- Obsolete Information. Adverse information that is considered "obsolete" cannot be included in a consumer report, except in certain circumstances discussed below.

Generally, information pertaining to bankruptcy is obsolete when it is more than 10 years old; other information is obsolete when it is more than 7 years old.

Be careful of companies that claim that they can "fix" a bad credit report. They can do nothing more than you can do, which is write a statement explaining an adverse but otherwise correct entry or requesting an investigation if the entry is in error.

SECTION VII LANDLORD/TENANT

References:

- (1) N.C. Gen. Stat. Chapter 42: Landlord and Tenant
- (2) (2) N.C. Gen. Stat. §§ 42-38 to 49: North Carolina Residential Rental Agreement Act

North Carolina Law on Security Deposits

- A landlord is allowed to require a security deposit of up to two months' rent if the tenancy is longer than month-to-month.
- A landlord may also charge a reasonable, nonrefundable fee for pets.
- The landlord shall deposit the renter's security deposit into an interest bearing account, but the renter is entitled only to the security deposit back and not any interest drawn on the account.
- The landlord may use the security deposit for nonpayment of rent, damage to premises beyond ordinary wear and tear, nonfulfillment of rental period, costs of re-renting after tenant's breach, court costs for bringing summary ejectment actions, and costs of eviction proceeding.
- However, within 30 days after the tenancy ends, the landlord must either return the security deposit or send the tenant a written, itemized list of damages.

Ways to Avoid Losing Your Security Deposit

- Do a complete "walk through" of the premises at the beginning of the lease and provide a list of damages (even the small ones) to the landlord, keeping a copy for your own records.
- When leaving the premises, clean it thoroughly and keep any receipts for professional cleaning services.

Early Termination of Leases

State Law Under North Carolina Gen. Stat. 42-45, any member of the United States Armed Forces who (1) is required to move pursuant to permanent change of station orders 50 miles or more from the location of the dwelling unit, or (2) is prematurely or involuntarily discharged or released from active duty, may terminate his rental agreement by providing the landlord with a written notice of termination and a copy of the official military orders.

In some unusual cases, North Carolina law 42-12, allows lease termination as a result of severe damage to your rental residence, such as might occur during a hurricane. The lease

may be terminated *by written notice to the landlord within ten days of the damage* if the damage is so severe that the premises can not be made fit except at a cost greater than the equivalent of one year's rent. This provision may not apply where the tenant or his guest caused the damage or when the lease contract addresses the issue of termination in the event of damage or destruction.

Federal Law (SCRA) Under the new provisions of the new SCRA leases may also be terminated

-If the lease was entered into prior to active duty service (for example, prior to boot camp or when a reservist renter is voluntarily or involuntarily activated);

-If the service member receives PCS orders or

-If the service member receives deployment orders in excess of 90 days

The liquidated damages required by the state law or leases are superceded by the federal law, which does not allow them. The termination date is effective 30 days after the next rent payment is due after written notice is given.

Landlords' Responsibilities. Under North Carolina law, a landlord must:

- Maintain the premises in good and safe working order. He must promptly repair all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances supplied or required to be supplied by the landlord. However, the tenant must first advise the landlord of such needed repairs in writing. The tenant may wish to inform the landlord of the problem immediately over the telephone or in person and then follow up by notifying the landlord in writing. The tenant should always keep a copy of all written communication between himself and the landlord.
- Comply with building codes.
- Keep common areas safe.
- Provide operable smoke detectors that have been approved by a national testing laboratory and have been installed properly.

Tenants' Responsibilities. Under North Carolina law, a tenant must pay rents due; and:

- Keep that part of the premises he occupies and uses as clean and safe as the conditions of the premises permit and cause no unsafe or unsanitary conditions in the common areas and remainder of areas which he uses;
- Dispose of all ashes, rubbish, garbage, and other waste in a clean and safe manner;

- Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;
- Not deliberately or negligently destroy, deface, damage, or remove any part of the premises, nor render inoperable the smoke detector(s) provided by the landlord, or knowingly permit any person to do so;
- Comply with obligations imposed on the tenant by current applicable building and housing codes;
- Be responsible for all damage, defacement, or removal of any property inside a dwelling unit in his exclusive control unless said damage, defacement or removal was due to ordinary wear and tear, acts of the landlord or his agent, defective products supplied or repairs authorized by the landlord, acts of third parties not invitees of the tenant, or natural forces; and
- Notify the landlord of the need for replacement of or repairs to a smoke detector.

What If There Is a Breach? As a tenant, if you think the landlord failed in his or her responsibilities to maintain the premises as required by law, you have a few choices:

- No self-help! In North Carolina, a tenant cannot unilaterally withhold rent from a landlord who fails to make required repairs. However, the landlord and tenant can agree to a reduction in rent. You're getting less, and you should therefore pay less.
- No abandonment! The tenant cannot abandon the premises unless it is specifically allowed in the lease (and most leases don't allow it without a penalty). There is no law that allows tenants to abandon any lease just by giving a notice thirty days in advance. If the tenant abandons the premises prior to the expiration of the lease, the tenant will still have to pay rent every month until the landlord rents the premises to another tenant or the lease expires.
- You cannot be thrown out! A landlord can't change the locks or otherwise prevent your entrance into the premises, even if you fail to pay the rent. In order to evict the you, the landlord must obtain a court order through a process called "summary ejectment."
- Small Claims Court. If the landlord and tenant cannot settle their differences between themselves, the tenant may file an action in small claims court. The tenant has the option of performing a repair and either suing to be reimbursed ("**rent recoupment**"), or suing to have the right to withhold future rent payments ("**rent abatement**") until he has recovered the cost of the repairs. The tenant may also sue before the problem is fixed and request that the court allow the tenant to withhold future rent payments to cover the cost of repairs.

SECTION VIII TAXES

1. Federal Income Tax – Military members and their spouses must pay federal income tax, as it is due. There are certain situations where the government provides special federal tax rules that may benefit military members and their families. Specifically, military members do not have to pay taxes on income earned in the line of duty while serving in specially designated combat zones. Also, military members are given extensions on the usual April 15 federal income tax filing deadline if they are serving in a combat zone.

2. State Income Tax – Military members must pay state income taxes on their military pay in their state of domicile. The domicile is the state where the military member intends to permanently reside. It is not altered if the military member moves pursuant to PCS orders.

A military member's domicile can only be changed by an affirmative action by the military member demonstrating a desire to permanently reside in the new state. Often, changing one's domicile requires notification and recognition by both the current state of domicile and the new state of domicile.

A military member's "Home of Record" is not the same as his domicile. Home of Record refers to the legal residence one claims with the Marine Corp when beginning military service. It does not normally affect a military member's domicile, although both the Home of Record state and state of domicile are the same for many military members.

Military members must pay state income taxes on any income earned from sources other than military pay and allowances to the state where that income was earned.

Spouses and dependents of military members must pay taxes in the state where income is earned. The income of the military member cannot be counted against the spouse or dependant when determining that person's tax liability.

Examples:

(1) Captain A is from Maryland. He has always paid his taxes there. Captain A gets orders to North Carolina. Captain A still pays state income tax on his military pay to Maryland. But, if Captain A has a job at night teaching basket weaving, he will have to pay state income taxes on that income in the state where it was earned.

(2) Captain A has a wife, Mrs. A, also from Maryland. Mrs. A. is a teacher in North Carolina. Mrs. A must pay state income taxes in North Carolina, but North Carolina cannot take Captain A's income into account when determining Mrs. A's taxes.

Captain A wants to claim Texas as his domicile, because he always thought the guys who wore gigantic hats and belt buckles on liberty in European countries were cool. Also, he

heard that he would not have to pay state taxes if he 'claims Texas.' Captain A may have to apply to both Maryland and Texas and prove that he actually plans to reside permanently in Texas,

3. Other Tax Issues –

A military member's personal property, such as a car, can only be taxed in the military member's domicile. To avoid personal property taxation in the state the member lives in only due to military orders, the personal property must be titled only in the military member's name. The military member may be charged a one time sales or excise tax if he purchases or licenses his property in the state where he temporarily lives. Also, the military member may be required to comply with the environmental fees and inspections of a state where the property is located.

Federal tax law allows any person who sells a house he or she has lived in for at least two of the last five years to receive up to \$250,000.00 of the profit tax free. Married couples that are eligible may receive up to \$500,000.00 profit on the sale of their home tax-free. In certain cases, military members may extend this five-year limit. They may receive the benefit of the rule even if they have only lived in the house for two of the last fifteen years.

Real Property is taxed where it is located.

Contact the base Tax Center or Legal Assistance office if you are having a tax problem or to see if you are eligible to participate in any of the tax rules explained above.

BASE TAX CENTER

The Base Tax Center is located in Building 50, near Holcomb Blvd on Lucy Brewer Street.

For information, call 451-3030/3439.

TAX CENTER WALK-IN HOURS: During regular tax filing season (mid-January thru April 15th) the Tax Center is open each weekday and may also have evening and weekend hours. Hours of operation will be widely disseminated through The Globe and other means. Unit appointments may be scheduled during regular business hours by calling The Tax Center SNCOIC at 451-5287

The tax center is open year round. During the “off-season” the tax center is open during regular business hours M-F.

Please bring W-2s, social security cards, proof of deposit information, A VALID E-MAIL ADDRESS and all other tax-related documents. A copy of your prior year's tax return is extremely helpful.

SECTION IX SMALL CLAIMS COURT

Reference: (1) A Guide to Small Claims Court, March 2001, Legal Services of North Carolina, Inc.

Point of Contact: (1) Onslow County Clerk of Court: (910) 455-4458

What Is Small Claims Court? Small Claims Court is part of the North Carolina court system where people settle disputes regarding property or money worth *\$4000 or less*. Every county in North Carolina has a Small Claims Court (sometimes called "Magistrate's Court"). The judge, called a magistrate, may or may not be a lawyer. There is no jury. The trial is quick and informal, usually lasting no more than 15 or 30 minutes. You are not required to have a lawyer to represent you in Small Claims Court, although you *may* have one. A person bringing a Small Claims Court action is called the plaintiff. The person being sued is called the defendant.

What Are the Costs of Small Claims Court? For each lawsuit, the plaintiff must pay a \$40.00 filing fee to the clerk of court plus an additional \$5.00 for each defendant to cover the cost of the sheriff getting the proper legal forms to the defendant. If you cannot afford to pay these fees, you can fill out a form called "Petition to Sue/Appeal as an Indigent," which you can get from the clerk, and you may not have to pay. If you win the lawsuit, the magistrate can order the defendant to reimburse these costs.

Where Do I File My Lawsuit? A Small Claims Court lawsuit needs to be brought in the county where the defendant lives.

SECTION X

IMMIGRATION, CITIZENSHIP AND NATURALIZATION

Who can file for Naturalization? You may file for citizenship if you are at least 18 years old and you have been a lawful permanent resident for at least 5 years; or, if you have been a lawful permanent resident for 3 years, married to United States citizen for those 3 years, and still married to that United States citizen (and the United States Citizen has been a citizen for 3 years); or, you are a lawful permanent resident who is eligible based on United States military service.

Military Eligibility

Recently enacted legislation provides for expedited naturalization processing for military service members. The categories of eligible persons are provided in greater detail below.

Section 328 [8 U.S.C. 1439]

A person who has served honorably at any time in the Armed Forces of the United States for a period or periods aggregating one year, and who, if separated from such service, was never separated except under honorable conditions, may be naturalized without having resided, continuously immediately preceding the date of filing such person's application, in the United States for at least five years, and in the State or district of the Service in the United States in which the application for naturalization is filed for at least three months, and without having been physically present in the United States for any specified period, if such application is filed while the applicant is still in the service or within six months after the termination of such military service.

Section 329 [8 U.S.C. 1440]

Any person who, while an alien or a non-citizen national of the United States, has served honorably as a member of the SMCR or the IRR or in active-duty status in the military, air, or naval forces of the United States during either World War I or during a period beginning September 1, 1939, and ending December 31, 1946, or during a period beginning June 25, 1950 through July 1, 1955, or beginning February 28, 1961, and ending on a date designated by the President by Executive order as the date of termination of the Vietnam hostilities, or thereafter during any other period which the President by Executive order shall designate as a period in which the Armed Forces of the United States are or were engaged in military operations involving armed conflict with a hostile foreign force, and who, if separated from such service, was separated under honorable conditions, may be naturalized as provided in this section if at the time of enlistment or reenlistment, extension of enlistment, or induction such person shall have been in the United States, the Canal Zone, America Samoa, or Swains Island, whether or not you have been lawfully admitted to the United States for permanent residence, or at any time subsequent to enlistment or induction such person shall have been lawfully admitted to the United States for permanent residence. The executive department under which such person served shall determine whether persons have served honorably in an active-duty status, and whether separation from such service was under honorable

conditions. Provided, however, that no person who is or has been separated from such service on account of alienage, or who was a conscientious objector who performed no military, air, or naval duty whatever or refused to wear the uniform, shall be regarded as having served honorably or having been separated under honorable conditions for the purposes of this section.

There is currently an Executive Order in place, signed on 3 Jul 2002 for service in the Global War on Terrorism. Anyone that served honorably on active duty for even 1 day since 9/11/01, is eligible for Naturalization. Naturalization is not automatic, applicants are still required to have good moral character, pass the civics test, be interviewed and sworn-in.

What to file:

N-400

N-426

G-326B

Fingerprints

Two pictures

\$310 (1 Oct 04 - application fee will be waived - at this point they will still have to pay the \$50 for fingerprints)

Active duty military are encouraged to use their Legal Assistance Office to get processed. The Legal Assistance Office can run the DCII (background check) and schedule the fingerprints, applicants cannot. The Legal Assistance Office should provide a cover letter with information dealing with deployments, phone numbers, mailing addresses and places of interview.

Other Immigration services provided by the Camp Lejeune Legal Assistance/Office of the Staff Judge Advocate:

Applications for Alien Relatives

Adjustment of Status Applications

Removal of Conditional Residence Application

Renewal of Alien Registration Cards

Extensions of Visas

Work Authorization Applications

For more help:

A. US Citizenship & Immigration Services Website – www.uscis.gov

B. USCIS Toll-free telephone assistance – 1-800-375-5283

C. Toll-free TTY – 1-800-767-1833

D. “The Air Force Guide to Citizenship Application”, available on-line at www.afpc.randolph.af.mil/mpf/customer/customer.htm

**E. JAL Guide to Naturalization available on-line at
<http://sja.hqmc.usmc.mil/jal/JAL.htm>**